IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

RSA No.: 441 of 2002.

Reserved on: 16.4.2007.

Date of decision: 9.5.2007.

R.V.N. Public School Society & Another. … Appellants

Versus

Dadahu Gram Sewa Sehkari Sabha Samiti. … Respondent

Coram :

The Hon'ble Mr. Justice V.K. Ahuja, Judge.

Whether approved for reporting?[1] No.

For the appellant : Mr. G.C. Gupta, Senior Advocate, with Mr.Mohinder Gautam, Advocate.

For the respondent: Mr. K. D. Sood, Advocate.

V.K. Ahuja, J.

This is an appeal filed by the appellants against the judgment and decree of the Court of learned Additional District Judge, Sirmour at Nahan, dated 20.7.2002, vide which the appeal filed by appellants against the judgment and decree of the court of learned Sub Judge Ist Class, Nahan, dated 12.6.2000, for the recovery of possession alongwith mesne profit, was decreed.

Briefly stated, the facts of the case are that a suit for recovery of possession and for mesne profit at the rate of Rs.3,000/- per month was filed by the respondent-plaintiff against the appellants (here-in-after to be referred as defendant-appellants) alleging that the plaintiff has leased out residential portion consisting of three school rooms, one residential room, a kitchen, a bath-cum-toilet and a shop in favour of the

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[1]Whether reporters of Local Papers may be allowed to see the judgment? Yes.

defendant-appellants at a monthly rent of Rs.800/-. The plaintiff terminated the tenancy of the defendants w.e.f. 31.10.1999 by serving a notice under Section 106 of Transfer of Property Act. It was alleged that the possession of the defendants is that of a trespasser w.e.f. 1.11.1999. The defendants allegedly had withheld the payment of rent at the rate of Rs.800/- per month w.e.f. Ist October, 1998 till 31st October, 1999, amounting to Rs.10,400/-. It was also alleged that after the termination of the tenancy, since the defendants are holding the suit property, the plaintiff is entitled to mesne profit at the rate of Rs.3,000/- per month from Ist November, 1999 till the actual delivery of the possession.

Defendants took up objections in regard to the relationship of landlord and tenant between the parties and competence of the plaintiff to file the present suit. It was alleged that the notice issued to defendants was not in accordance with the lease deed, dated 17.6.1994. It was pleaded that the rent was paid upto October 1998 by the defendants, which was accepted by the said Society. The defendants also claimed a sum of Rs.8,230/- spent by them on the maintenance of the School and that suit for mense profit is not maintainable. It was pleaded that the defendants are bound by the written agreement and Section 106 of the Transfer of Property Act is not applicable.

The suit was tried by the learned trial court who held that since the agreement stood terminated after the issuance of notice, which was not renewed inspite of a renewal clause, therefore, the agreement came to an end and the plaintiff was entitled to possession. In regard to mesne profit, it was held that the plaintiff was entitled to the rent due till the date of possession. On appeal, the findings of the learned trial court were affirmed by the learned First Appellate Court.

I have heard learned counsel for the parties and have gone through the record of the case.

The submissions made by the learned counsel for the appellants were that according to the terms of the lease deed, three months notice on either side was required to be issued for the termination of the tenancy. However, it was pleaded that since the defendants continued accepting rent even after the expiry of the period of one year provided in the agreement, therefore, notice of three months was required to be issued as per the agreement. Section 106 of the Transfer of Property Act provides for issuance of a notice of 15 days in case there was no agreement to the contrary. It was further submitted that since the rent was accepted by the plaintiff for a long period, it shows that the agreement was revived on the same terms and conditions as given in the agreement. It was submitted that once the landlord accepted rent without reservation for a period of about three years, fresh tenancy shall be deemed to have been created on the same terms and conditions. It was further submitted that the learned trial court had held the possession of the defendants as tenant by holding over while the learned First Appellate Court had held the plaintiff as tenant by sufferance. But since whatever name is given to this tenancy, as the plaintiff continued as tenant on the same terms and conditions and since three months notice was not issued, the suit was liable to be dismissed.

On the other hand, the learned counsel for the respondents had supported the impugned judgments for the reasons given therein supplementing it by submission that plaintiff was tenant by sufferance, no notice of three months was required to be issued since the plaintiff had never consented to the fresh tenancy and acceptance of rent does not lead to the inference that the tenancy stood revived on the same terms and conditions as embodied in the agreement.

There is no dispute in regard to the fact that according to the original agreement in question, a three months notice was required

to be issued for the termination of tenancy which was not issued in the present case. There is no dispute in the interpretation of Section 106 of the Transfer of Property Act that a notice is required to be issued for a period of 15 days/one month unless there is a contract to the contrary. There is no dispute that the rent was accepted by the plaintiff even after the issuance of the notice under Section 106 of the Transfer of Property Act. According to the terms of the agreement, the tenancy was created on 17.6.1994 for a period of one year. The notice in question Ext.PW-3/B was issued on 13.9.1999 and the tenancy stood terminated w.e.f. 31st October, 1999.

The main point of dispute is as to whether a three months notice was required under the agreement in question and the agreement stood revived on the expiry of the period and by the fact that the rent was accepted by the plaintiff. The connected question which arises for consideration is as to whether 15 days notice was required to be issued upon defendants under Section 106 of the Transfer of Property Act, since the agreement was not in force and, therefore, a valid notice was issued to the defendants. The learned trial court had referred to these two points and had concluded that the tenancy of the defendants can be termed as tenancy by holding over since even after the issuance of the notice, the plaintiff continued to accept rent till the year 1998. The appeal was admitted on these two points relating to notice and whether defendants are tenant at sufferance or by holding over. The plea of the plaintiff's counsel was that the defendants are tenants by sufferance on account of their continuance in the disputed premises after the expiry of period of one year, as per the terms and conditions of the agreement Ext.D-1, was also held to be not sustainable by trial court since no objections were raised by the plaintiff. It was held that the defendants continued in possession with the consent of the landlord and, therefore, in my view contradictory findings were given by the learned trial court.

In appeal, the learned First Appellate Court had referred to several judgments cited before him and it was held that the term tenant by holding over means who continues in possession after the termination of the term with the consent of the landlord, whereas the latter does so without his consent. It was held that since the defendant, on its own showing, proved himself to be a tenant by sufferance, no notice to quit was required to be served upon it. It was held that the tenancy having been determined by efflux of period of one year and defendant No.1 being a tenant by sufferance, it was held that the plaintiff is entitled to possession of the leased premises without serving it a notice to quit. I may make a reference to the decision referred to by the learned counsel for the appellant-defendants. In the decision in ***R.V.Bhupal Prasad*** v. ***State of A.P. and others*** (1995) 5 Supreme Court Cases 698, distinction was drawn by their Lordships to the term holding over or at will and tenant at sufferance. The lease stood determined by efflux of time. Lessee continuing in possession thereafter in contravention of the terms of lease and despite absence of acquiescence by lessor, it was held that such possession neither legal nor lawful but only as tenant at sufferance. In ***Kewal Chand Mimani*** v. ***S.K. Sen and others*** *(2001) 6 Supreme Court Cases 512* , it was held that holding over of the property after determination of lease does not necessarily create a tenancy of any kind. Lessee in possession without consent of landlord after determination of lease, becomes a tenant at sufferance. Such lessee is completely different from a lessee who has been dispossessed.

Learned counsel for the respondent relied upon the decision in ***Shanti Devi*** v. ***Amal Kumar Banerjee*** AIR 1981 Supreme Court Cases 1550. A perusal of the same shows that the following observations were made, which are relevant and are being reproduced below:

> *"Before deciding the validity of notice under S.106, the Court should first decide whether S.106 is applicable or not. It cannot assume that the lease was from month to month. Thus where a lease isfor a fixed term, theCourt cannot take the pleadings of the parties for determining the nature of the lease. Parties cannot by their pleadings alter intrinsic character of lease."*

From the discussion of the evidence, it is clear that there was no written consent by the plaintiff for the fresh creation of tenancy and merely the fact that they accepted the rent for the period of about 3 years is not sufficient to hold that the tenancy stood revived on the same terms and conditions as provided in the original agreement. There was a renewal clause in the agreement, which was not invoked by the defendants either explicitly by talking to the plaintiff or impliedly by issuing a notice to the plaintiff, in any form. Until and unless they revived the tenancy, it shall not be deemed that the tenancy stands revived on the same terms and conditions as embodied in the agreement. Once there was termination of a tenancy by issuance of a notice as prescribed under Section 106 of the Transfer of Property Act, which was to be 15 days notice and as there was no subsisting agreement in between the parties, the notice issued under Section 106 of the Transfer of Property Act was a valid notice. The status of the defendants was in a way as tenant by sufferance or as a trespasser. Both the courts below had given their own reasoning but net conclusion remains the same that the tenancy stood terminated by efflux of the period of one year and plaintiff was entitled to possession of the leased premises by serving a 15 days notice as required under Section 106 of the Transfer of Property Act or without serving it with a notice to quit the defendants being a trespasser. Those findings do not call for interference by this Court.

The appeal was admitted only in regard to interpretation of the provisions of Transfer of Property Act and the agreement and the validity of the notice on which I have given my findings as above that

the findings of the courts below are correct. The submissions were also made by the learned counsel for the appellants in regard to the status of the plaintiff to file the suit or his competence and since the appeal was not admitted on any of such grounds, no arguments can be considered in this regard. The findings recorded by the First Appellate Court do not call for an interference by this Court and as such are liable to be affirmed and the same are affirmed accordingly.

Hence there is no merit in the present appeal and the same is dismissed with costs including the lawyer's fee. Decree sheet be prepared accordingly. Record of the courts below be returned.

(V.K. Ahuja),
Judge

May 9, 2007
(trs)